IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12126 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RP SAGAR

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 12126 of 2001

MR BB NAIK for Petitioner No. 1

MS PJ DAVAWALA for Respondent No. 1-4

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 26/06/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

The petitioner was serving as UDC in the respondent's Department. He was directly recruited as

UDC in 1989 by an order dated 28.9.1989 (Annexure B) on probation for a period of 2 years with certain conditions. One of the conditions was that he should pass departmental examination within 2 years of his appointment which he passed. Still his probation period was extended for a period of one year by an order dated 14.8.192 (Annexure C/1) and later on by order dated 23.8.1993 (Annexure C-2), it was extended for a further period of 1 year. He was initially posted at Rajkot and thereafter, in the Custom Division Office at Porbander. During that period, he was transferred from one place to other as according to him, he was vocal and outspoken and supplying information to the Higher Authorities against the officers of the Custom Department. After completing the extension of probation period in 1993, though the period of more than 4 years passed, he was not confirmed. Because of his conduct he was served with a show cause notice dated 27.3.1995 calling upon him to show cause as to why he remained absent from duty and also to show cause as to why necessary action should not be taken against him under the CCS (Conduct & Services) Rules and other laws applicable against him. He replied to that show cause notice by his letter dated 9.5.1995. It is his case that after he submitted his reply dated 9.5.1995 instead of considering his reply, the Authority all of a sudden decided to terminate his services by the impugned order dated 18.12.1995 (Annexure D) whereby his services were terminated w.e.f. from the date of expiry of one month from the date on which the notice was issued or served upon him.

2. Aggrieved of the impugned order dated 18.12.1995 (Annexure D) terminating his services under Rule 5(1) of the CCS (Temporary Service) Rules, 1965, the petitioner approached the Central Administrative Tribunal (Ahmedabad Bench) (for short the "Tribunal") by way of O.A.No.1020 of 1995 which was dismissed by the Learned Tribunal by its judgement and order dated 30.10.2001. Hence this petition.

3. Learned Counsel Shri Naik for the petitioners submitted that once the petitioner completed period of 4 years on probation then the Authority should have considered him deemed to have been confirmed. Therefore, his services could not have been terminated under Rule 5 of the CCS (temporary service) Rules, 1965 as he required the status of permanent servant. He also submitted that if the veil is lifted then it is clear that the Authority got rid of the petitioner by passing the impugned order dated 18.12.1995 by dispensing with the regular inquiry and the petitioner is made to suffer because of his

outspoken nature. He submitted that because of his straight forwardness and outspokenness, within a short period of less than five years, he was transferred from one place to other place quite often and ultimately, the Authority had even issued show cause notice calling upon him to show cause as to why action should not be taken against him under CCS (Conduct) Service Rules, but after the said notice was replied by the petitioner on 9.4.1995, they did not do anything in the matter and sat quiet for a considerable time and all of a sudden, by an order dated 18.12.1995, his services were terminated. He, therefore, submitted that the impugned order of termination ought to have been quashed and set aside by the Learned Tribunal. This second submission of Mr.Nayak was not considered and properly dealt with by the Learned Tribunal in the impugned judgement.

4. However, we must state that the Tribunal did reproduce the case of the applicant in the first page of its judgement but thereafter, not dealt with the said aspect in the judgement. Mr.Nayak had pointed out to us that in his original application, draft amendment was carried out and this point was specifically raised. Unfortunately, the same was not considered properly.

5. Ms.Davawala, Learned Counsel for the respondent vehemently submitted that it was not a case of punishment and it was a case of termination simpliciter. Therefore, when the Authority was of the opinion that his services were not required in the interest of the Department and on that ground, if his services are terminated then this Court cannot sit in appeal over the decision of the Authority in its writ jurisdiction, more particularly, when the Tribunal has rejected the application of the petitioner. In support of her contention, Ms.Davawala has relied on 3 judgements (1) 2000 (5) SCC Page 152, (2) 2000 (7) SCC 161 and (3) 2000 (5) SLR 294. In support of this submission, Ms.Davawala has also pointed out from the averments made in the affidavit in reply at running page 46 of this petition that the petitioner was in habit of remaining absent and in 1993, he remained absent for 31 days in November and 17 days in December, in all 48 days, in 1994 he remained absent for 312 days and in 1995, he remained absent for 355 days. She, therefore, submitted that the petitioner was never interested in serving the Department. Therefore, his services were terminated. The averment made in the reply affidavit itself made it clear that initially the Authority wanted to proceed against him by way of a departmental inquiry for remaining absent from duty but thereafter, instead of holding regular inquiry, straightaway, they have decided

to terminate the services of the petitioner. Thus, it is clear that the Authority never wanted to hold the regular inquiry. If the regular inquiry was held then the petitioner could have offered explanation and defended himself in it. Once the veil is lifted, it is clear that it was not an order of termination simpliciter and it was passed by way of punishment. Under the circumstances, in our considered opinion, none of the judgements of the Honourable Supreme Court cited by Ms.Davawala will have any application to the facts of this case. In view of the above, we have not thought it fit to deal with the first submission made by Learned Counsel Mr.Naik regarding status as to whether the petitioner was a temporary servant or permanent servant. In view of the above, this petition is required to be allowed and the impugned order of termination is required to be quashed and set aside. However, the question is, would he be entitled for backwages? Considering the fact that the petitioner was remaining absent from duty in past on several occasions, therefore, we are not inclined to award any backwages.

6. In view of the above discussion, this petition is allowed and the impugned judgement and order passed by the Tribunal in O.A.1020 of 1995 dismissing the application of the petitioner-applicant is hereby quashed and set aside and O.A.No.1020 of 1995 filed before the Tribunal is accepted and the impugned order dated 18.12.1995 terminating the services of the petitioner is hereby quashed and set aside. The petitioner is ordered to be taken back in service with all other consequential benefits of service including continuity in service except backwages. We also make it clear that it will be open to the Department to proceed against the petitioner by way of regular inquiry for remaining absent. Rule is made absolute with no order as to costs.

(B.J.Shethna, J)

(Akshay H Mehta, J)
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